FILED
NOV 29 1988
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

GLEN WALKER, et al.,

Appellants

vs.

VALLEY NATIONAL BANK OF
DES MOINES, IOWA,
ADMINISTRATOR OF THE
FLORENCE WALKER ESTATE
AND REXFORD WALKER, et al.,

Appellees

ON APPEAL FROM THE COURT OF
APPEALS OF IOWA

JURISDICTIONAL STATEMENT

BENFORD WALKER, GLEN WALKER,
AND BENFORD WALKER AND GLEN
WALKER, NEXT FRIEND OF
FLORENCE WALKER AND THE
FLORENCE WALKER ESTATE

201 N.W. College
Ankeny, Iowa 50021

Appellants

QUESTIONS PRESENTED FOR REVIEW

1. Whether the 21st Amendment to the Iowa Constitution, including those provisions which in the judicial selection process grants special voting rights to lawyers that are denied to other citizens including appellants and which make District Court Judges and a Supreme Court Judge chairmen of the Commissions that select their fellow members on the bench, violates appellants rights of due process of law and equal protection of the laws which are guaranteed by the 14th Amendment to the United States Constitution.

2. Whether the transfer of Judges (and the policy implementing the transfer) under Authority of Rule 375 of the Iowa Rules of Civil Procedure, from another judicial election district to preside over appellants court actions and upon whom appellants may neither help select or vote to remove, violates appellants rights of due process and equal protection of the laws under the 14th

Amendment to the U. S. Constitution?

3. Whether the placing of Florence Walker under the legal jurisdiction of her court adversaries even before the completion of her conservatorship and estate proceedings, and whether the court orders (App. M, p. 34) (App. N, p. 37) which prevented the executor and his attorney from defending her interests in a contest of her will and other proceedings deny Florence Walker access to the Court and violate Florence Walker's rights under the 14th Amendment to the United States Constitution of due process and equal protection of the laws?

4. Whether appellants were denied their rights of due process of law and equal protection of the law under the 14th Amendment when the Court would not obtain a transcript for which they were willing to be assessed and which they could only afford with funds of theirs held by the Administrator of the estate against whom they had an action pending and without which they could not perfect an appeal?

LIST OF PARTIES IN THE IOWA SUPREME COURT AND IN THE IOWA COURT OF APPEALS

(1) Benford Walker, (2) Glen Walker, (3) Benford Walker and Glen Walker, "Next Friend" of Florence Walker and the Florence Walker Estate,

Appellants

(1) Rexford Walker, (2) Charlotte Smith, (3) Charles J. Walker, (4) Milo D. Dailey IV, (5) Margaret Rebecca Thurston, (6) Michael Dailey (Represented by Attorney David Phipps),

(7) Valley National Bank of Des Moines, Iowa, Administrator of the Florence Walker Estate, (Represented by Attorney Bernard O'Malley),

Appellees

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APPEAL FROM THE FINAL RULING OF

THE COURT OF APPEALS OF IOWA

DATED JUNE 29, 1988.

JURISDICTIONAL STATEMENT

Glen Walker and Benford Walker and Benford Walker and Glen Walker, "Next Friend" of Florence Walker and the Florence Walker estate, appeal from state court rulings that did not support their contentions that they were deprived of fundamental Constitutional rights.

OPINIONS BELOW

The opinion of the Court of Appeals of Iowa is not reported. A copy is included in the Appendix (App. A, p. 1).

A copy of the ruling by the Supreme Court of Iowa denying appellants Application for Further Review of their appeal is included in the Appendix (App. B, p. 9).

A copy of the District Court rulings, (1) overruling motion of Benford and Glen Walker requesting order concerning transcript (App. F , p.14) and overruling motion to reconsider the preceding order (App. 1 , p. 27), (2) affirming the probate referee's rulings on the Application for Fees (App. G , p. 19)

and the final report (App. H , p.24) of the Administrator of the estate, appear in the Appendix.

JURISDICTION

The ruling of the Court of Appeals of Iowa which affirmed the State District Court rulings was filed June 29, 1988. An Application for Further Review by the Iowa Supreme Court was considered and overruled and denied by the Supreme Court of Iowa on September 2, 1988.

A Notice of Appeal was timely filed in the Supreme Court of Iowa on November 23, 1988.

The jurisdiction of the United States Supreme Court is invoked under 28 U.S.C. § 1257 (2).

CONSTITUTIONAL PROVISIONS AND RULES

(1) 14th Amendment, United States Constitution, Sections 1 and 2 (App. J, p. 29).

(2) 21st Amendment, Iowa Constitution (to Section 17) (App. K, p. 30).

(3) Rule 375, Iowa Rules of Civil Procedure (App. L, p. 34).

STATEMENT OF THE CASE

This case has its origin in the Polk County Iowa Probate Court and concerns the Estate of Florence Walker and the final report (and objections thereto) of the Administrator of her Estate.

Benford Walker and Glen Walker (Appellants herein) are unmarried and are sons of Florence Walker. They farmed their mother's modest sized farm (appraised at about $129,000.00 by the Court appraisers) and lived with her (and their father while living) virtually all of their lives. They were named the chief beneficiaries, and Benford Walker was named executor of the estate in her will. The other children had left the farm and pursued their own interests many years before Florence Walker died at the age of eighty-seven.

Following the opening of the Estate, a

hearing was held on the final report of the conservator of Florence Walker, which involved thousands of dollars of fees. The attorney for the Estate would not attend the hearing.

Soon thereafter, the other children (Appellees herein) of Florence, through their attorneys, Whitfield, Musgrove, Selvy, Kelly and Eddy (the Whitfield Law Firm) filed an action contesting the validity of Florence Walker's will. At that time the Whitfield Law Firm was already representing a party who had filed a claim against the Estate.

Prior to the trial, the Court issued an order (App. M, p. 34), which prevented the executor of the Estate (a named defendant) or his attorney from defending the will in the "will contest."

Before the trial court proceedings had been completed, and not after as stated by the Probate Referee, Benford Walker was removed as Executor of the Estate and the Court named the Valley National Bank of Des Moines as Administrator of the Estate, although Mr.

Whitfield of the Whitfield Law Firm was on the Board of Directors of the Valley National Bank.

Soon thereafter and again before the trial court proceedings had been completed, Attorney Bernard O'Malley, who had been hired by the Executor of the Estate to protect the interests of the Estate as set out in the will, changed sides and became the attorney for the Administrator, the Valley National Bank.

While Executor, Benford Walker filed an action to set aside an involuntary conservatorship of Florence Walker because, among other things, (1) the Guardian ad litem, who was selected by the Petitioners' attorney in the original proceedings, did not answer the petition as required, (2) only the petitioners side of the case was allowed to be presented to the Court, and (3) after the incomplete hearing, a Conservator was appointed that had the same attorney as the Petitioners (those later contesting the will).

However, after Benford Walker was removed as Executor, the Court issued an Order (App. N, p. 37) that Benford Walker could not represent the Estate in the proceedings he initiated nor could the successor administrator.

Prior to her death and the involuntary conservatorship, Florence Walker filed a malpractice case against the Iowa Lutheran Hospital and a Dr. Reed as a result of receiving a broken pelvis and other injuries in the hospital. After some nine years and once having the case dismissed by the Court, the Valley National Bank, the Administrator, recommended a small settlement. It later came to light that a Mr. Bergeman, who was on the Board of Directors of the Lutheran Hospital was also on the Board of Directors of the Valley National Bank.

It should be pointed out that Florence Walker wrote her will before the injury in the hospital and before she was placed under conservatorship.

During the administration of the Estate, part of the farm was sold to a buyer represented by a law partner of the Estate's attorney, Bernard O'Malley. The Administrator gave away considerable assets belonging to the Estate, it did not protect the farmhouse containing large amounts of Florence Walker's personal belongings, with the result that both house and contents were destroyed by fire. It gave away large amounts of property (farm machinery, etc.) to the alleged purchasers and it did not collect assets belonging to the Estate held by Charlotte Smith, client of Mr. Whitfield. All of the above facts are in the Court files.

In the Application for Fees, accompanying the final report, the fees requested exceeded $50,000.00 and the Probate Referee approved fees in excess of $35,000.00 for the Administrator and its attorney, although Attorney O'Malley did not qualify as attorney for the Estate as Iowa Law requires.

As set forth in the Iowa Court of Appeals

ruling, there have been numerous proceedings during the period of the Estate. Also, there was a complaint filed in the Federal Court which ended in a denial of certiorari in the Supreme Court. Walker et al. v. Iowa et al., 479 U.S. 816, the issues therein of the constitutionality of (1) the 21st Amendment to the Iowa Constitution, (2) the transfer and rotating of judges, and (3) the denial of appellants access to the Court, are the same as those questions raised in this case.

A hearing was held on the final report and Application for Fees by the Administrator, and upon objections, the District Court upheld the rulings of the Probate Referee.

Prior to hearing by the District Court on the Probate Referee's rulings, the Appellants asked the Court's assistance in obtaining a transcript of those proceedings, which was refused.

The Appellants herein appealed the District Court rulings to the Supreme Court of

Iowa as they may do as a matter of right.

The Supreme Court then transferred the case to the Iowa Court of Appeals, which issued its decision (App. A, p. 1). Appellants then filed an Application for further review of the case with the Iowa Supreme Court, which they may do as a matter of right but the Supreme Court overruled and denied the Application (App. B , p. 9). This appeal follows.

HOW THE FEDERAL QUESTION WAS RAISED

The Administrator raised the Federal issues in its final report and Application for Fees (court file) and introduced several exhibits from the Federal Court proceedings at the hearing before the Probate Referee in support of its contention that no federal issue existed. Appellants objected and gave argument to the contrary. In her rulings, the Probate Referee made only a brief reference to these matters, noting that certiorari had been denied Appellants in the Federal proceedings. The District

Court upheld the Probate Referee's decisions.

Appellants raised the issues, (1) that the 21st Amendment to the Iowa Constitution was unconstitutional, (2) the transfer of judges from one election district to another was unconstitutional and (3) that Florence Walker had never been accorded due process and equal protection of the laws as required by the 14th Amendment in the Probate Court proceedings. Appellants also pointed out to the Court the problems raised by denying them the transcript alluded to above.

As can be seen from the opinion of the Iowa Court of Appeals (App. A , p. 1), that Court considered and expressly ruled on the Federal constitutional issues raised. The Supreme Court, in considering and in overruling and denying further review of the appeal, also expressly ruled on the Federal constitutional claims, including those involving the transcript as in the application for further review, Appellants pointed out on that issue the Constitutional depri-

vations that had been imposed upon them.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

First general considerations applicable to all questions presented.

1. The Appellants are proceeding "pro se" and even if they could afford an attorney, the question remains as to whether he would be unprejudiced because of the provisions of the 21st Amendment to the Iowa Constitution, which the Appellants contest.

2. Because of the numerous interested parties usually without representation, strict rules of pleading and strict conformity to proof are not required in probate proceedings such as this one.

3. The Conservator and the Administrator are operating under the jurisdiction of the Court and therefore the burden is on them to ensure that the ward and the Estate are afforded their Constitutional rights, and, in addition, even if no objection to their actions is made, the personal representative

must show his accounts are correct.

4. In Iowa, appeals from the District Court ruling on the final report and Application for Fees of an Administrator of an estate is de novo, and in receiving such an appeal, the Supreme Court (or Court of Appeals) is not bound by the Probate Referee's finding but will review the entire record (in this case, the entire probate proceedings).

They may thus correct any fraud or mistake in the proceeding at hand instead of forcing the oppressed to resort to some collateral proceeding.

Question 1. Whether the 21st Amendment (App. K , p. 30) to the Iowa Constitution is itself Constitutional. On its face, it is repugnant to the 14th Amendment (App. J p. 29) to the United States Constitution. It provides that lawyers only may vote for elective members of the judicial nominating commissions but all others, including the Appellants, Benford Walker and Glen Walker,

may not. Inherently, it denies appellants equal protection and due process. In the first place, granting one occupational group (and excluding all others) the right to vote is not permitted, Gray v. Sanders, 372 U.S. 368 at 380. It is the very type of deviation which is inconsistent with equal protection. See Harper v. Virginia Board of Elections, 383 U.S. 663, 665. This infringement of Appellants (and others) right to vote calls for careful and meticulous scrutiny, Reynolds v. Sims, 377 U.S. 533, 562 and calls for a determination whether the denial of Appellants right to vote is necessary to promote a (required) compelling state interest. Kramer v. Union Free School District, 395 U.S. 621, 627. Appellants state it is not necessary and moreover is not desirable.

Each citizen and every citizen has as great an interest in the Court as any other. The decisions of the Court affect all and indeed even the Iowa Supreme Court (in a

document distributed by them and which was included in Appellants State Supreme Court brief) stated that:

> "The law and the Courts are of the people. They are too important to be the province of a single profession or to be possessed or understood by a few...."

Moreover, the distinctions between those permitted and not permitted to vote are not rational. A 22 year old lawyer and recent resident of the state is allowed to vote but Senator Grassley, a life long resident, entrusted by the entire electorate of Iowa to make the laws of the nation, is not allowed to vote. The Commission, if justified, should represent a broad spectrum of society in order that the best possible selections (of judges) can be made.

It also should be pointed out that the provision is inconsistent with itself because it sets no qualifications for the Commission members. They need not be lawyers but, of course, always are.

The only thing the 21st Amendment does is transfer the political rights of some 3,000,000 people to 10,000 or so lawyers and therefore, Appellants repeat the Supreme Court should review this issue.

Appellants, for all the reasons above, also object to making judges chairmen of the Commissions that select their fellow members on the Court. This not only violates Appellants equal protection and due process rights but, as with the election provisions above, denies them their right to have a Republican form of Government as well.

Also, in spite of the preceding argument, Appellants do not concede that judges need not be elected. Regardless of any implications to the contrary (by Court rulings), Appellants believe that Section Two of the 14th Amendment clearly sets that forth.

Finally, the statement in the Iowa Court of Appeals ruling (App. A , p. 5) that the Doctrine of Res Judicata precludes a review of this issue (and issues 2 and 3

below) because they had been raised in the Federal Court is without merit. The Supreme Court denied Appellants petition for a Writ of Certiorori and as the Supreme Court has stated that denial imports no expression upon the merits of the case, United States v. Carver, 260 U.S. 482, 490, nor does it establish the law of the case or amount to res judicata on the points raised. Hughes Tool Co. v. Trans World Airlines, 409 U.S. 363, 366.

When a court ascribes to the judgment of another court, the binding force and effect of res judicata (as did the Iowa Court of Appeals in this case), it is the duty of the Supreme Court to determine if that decision was correct, Hansberry v. Lee, 311 U.S. 32 at page 40 and whether the litigant has been afforded his Constitutional rights. This is additional argument why the Supreme Court should fully review this case.

Question 2. Whether Rule 375 of the

Iowa Rules of Civil Procedure and the policies implementing it are constitutional raises some additional argument. As with question (1) above, when judges are transferred from another election district, to hear their cases, appellants have been denied their rights of due process and equal protection afforded them by the 14th Amendment. Therefore, all the argument and authority set forth regarding question (1) above is repeated here.

In addition, appellants are not treated equally with at least two classes of citizens. First, with those in their own judicial election district whose cases are heard by local judges upon whom they may, at least, vote on to dismiss, and secondly, with those in the transferred judges' own election district who may vote to dismiss him.

Furthermore, Rule 375 and the policy implementing it lends itself to abuse. A judge may be transferred to a different dis-

trict to hear a controversial or unpopular case peculiar to that district alone. Whether or not he rules correctly, animosity is raised which might cause his removal were he to be voted on in that district. For other reasons, local judges may prefer not to hear a local case.

Take the appellants' experience for example. Transferred judges presided over their cases on the final report of the Conservator, the action to set aside the Conservator, the will contest and other cases. Statistically, that doesn't appear to be likely.

The will contest presents a good point. The proceedings in that case were initiated under one judge and then continued under another. They were apparently merely exchanged.

The policy implementing Rule 375 appears to be to rotate judges and not to provide for expediting the judicial process

uniformly across election districts.

Administrative convenience is not ample reason to deny appallants their voting rights on judges. Other rules and procedures can be conjured up, which will provide for expediting the judicial process and which will insure appallants' constitutional rights.

For the above reasons, the Supreme Court should fully hear this case.

Question 3. Whether Florence Walker and her estate have been afforded due process present a good view of why those who find themselves there are beset with so many problems in the Probate Court.

They do not receive proper representation and they do not have access to the Court.

Florence Walker's situation is a case in point. As set forth in the statement of the case, in the conservatorship proceedings, the guardian ad litem, who was selected by the Petitioner did not answer the petition as required and only Petitioners side of the

case was presented to the Court. In essence, Petitioners were named Conservator. In the will contest by Court order (App. M , p. 34), she could not defend the will. Again, before proceedings were completed, her adversaries were given legal jurisdiction over her (her estate) by being named administrator. It made no appeal.

By the Court Order (App. N , p. 37), she was left without representation, which denied her a hearing and due process. Powell v. Alabama, 287 U.S. 45 at 68-69.

The fact she had no attorney, above, and the fact that the Estate's attorney changed sides and represented the Administrator left her original position without representation and that is the type of activity that decrees that a judgment be set aside, United States v. Throckmorton, 98 U.S. 61 at 65, 66.

It is fundamental that one may not be deprived of life, liberty, or property by adjudication without notice and opportunity

to be heard. The right to will property falls under the above umbrella. Boddie v. Connecticut, 401 U.S. 371, 380.

In its ruling, the Iowa Court of Appeals stated that the Doctrine of Res Judicata precluded the reasserting of certain issues. As seen above, the doctrine does not apply when one has never been before the Court or when as here fraud has been exercised to prevent a hearing on the merits.

Since Florence Walker or her estate were not properly represented, the argument is here made as well, that she had never had notice of the proceedings the Court of Appeals alluded to.

The argument that some might raise that Florence Walker should have sought a Writ of Certiorari from the Supreme Court to review the previous State Court rulings is without merit. The issue is she was placed under the legal authority of her Court adversaries so she could not seek that writ. Her adversaries are not going

to protect her interest to their detriment.

For the above reasons, Benford and Glen Walker as "Next Friend" of Florence Walker and the Florence Walker Estate, in order that the impositions on Florence Walker could be settled in the forum intended instead of in some collateral proceeding, join in this appeal. Precedent indicates this should be done.

Incidentally, the Doctrine of Res Judicata does not apply to appellants, either, as the latest proceedings in the State Court brought forth information which revealed the improper representation and collusion (see Statement of Case). The Appellants know of no authority or precedent for "Grandfathering in" fraudulent representation.

Question 4, as to whether appellants could be denied a transcript, addresses a unique situation. In its opinion (App. A , p. 7), the Court of Appeals stated it could not address the propriety of the actions of

the estate administrator because the Appellants had provided no transcript of the hearing before the Probate Referee. Therein lies the problem.

1. Without the transcript, Benford and Glen Walker could not show the impropriety of the Administrators actions and

2. They could not afford the transcript without assets (in adequate amount) of theirs held by the Administrator (which they charge with impropriety). Those assets are, in effect, controlled by the Court.

In the hearing on their motion requesting transcript, they pointed out that they could not afford the transcript and that the Court could obtain the transcript and assess its costs to them as Probate Courts routinely do. Their requests were denied. They are thus left in a classic "Catch 22" situation. Appellants contend that the Court's rulings, which denied them access to the Court, violated their 14th Amendment

rights of equal protection of the laws and due process.

In Griffin v. Illinois, 351 U.S. 12, 19, the Court held that "destitute defendants must be afforded as adequate Appellate review as defendants who have enough money to buy transcripts." Griffin further states at page 19 that "there can be no equal justice where the kind of trial a man gets depends on the amount of money he has." Although Griffin is a criminal case, the Court has apparently adopted this latter view in some civil cases, such as Boddie v. Connecticut, 401 U.S. 371, 380. Appellants contend that they also should not be deprived of their appeal rights and access to the Court because of the above described Court derived indigency, which could have been cured by the Court as Appellants suggested. Again, Appellants point out that they never objected to paying for the transcript should that have been appropriate. From the hearing regarding those transcripts, they state:

> "They can assess the value of that transcript to us..." (Transcript of hearing January 9, 1987, page 10 in the Court File).

This issue should also be fully reviewed.

CONCLUSION

The Constitution of Iowa, including its 21st Amendment, has a direct impact on all of Iowa's citizens. Sooner or later most of us will have direct, or at least indirect, contact with the Probate Court. Because of this widespread involvement and concern and for the reasons stated above, the Supreme Court should fully review this appeal.

STATEMENT REGARDING 28 U.S.C. § 2403 (b)

As the constitutionality of the 21st Amendment to the Iowa Constitution is drawn in question in this proceeding, 28 U.S.C. § 2403 (b) may be applicable.

Respectfully submitted,

Glen Walker
Glen Walker

Benford Walker
Benford Walker

Glen Walker

Benford Walker
Glen Walker and Benford Walker, Next Friend of Florence Walker and the Florence Walker Estate.

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

GLEN WALKER ET AL.,

APPELLANT,

VS.

VALLEY NATIONAL BANK OF DES MOINES
ADMINSTRATOR OF THE FLORENCE WALKER
ESTATE AND REXFORD WALKER ET AL.,

APPELLEES'.

ON APPEAL
FROM THE COURT OF APPEALS OF IOWA

APPENDIX TO JURISDICTIONAL STATEMENT

GLEN WALKER, BENFORD WALKER AND
BENFORD WALKER AND GLEN WALKER
"NEXT FRIEND" OF FLORENCE WALKER
AND THE FLORENCE WALKER ESTATE,
APPELLANTS.
201 N.W. COLLEGE
ANKENY, IOWA 50021

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Appendix A

IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE ESTATE OF
FLORENCE E. WALKER, Deceased,

BENFORD M. WALKER, and GLEN
WALKER and BENFORD WALKER and
GLEN WALKER, "Next Friend"
of Florence Walker and the
Florence Walker Estate,
Appellant

vs.

REXFORD A. WALKER, CHARLOTTE
SMITH, CHARLES J. WALKER, MILO D.
DAILEY, IV, MARGARET REBECCA
THURSTON, and MICHAEL DAILEY,
Appellees.

Filed June 29,1988

8-188
87-223

Appeal from the Iowa District Court for Polk County (Probate No 25-8339),Harry Perkins, Judge.

Appellants appeal the district court's rulings affirming the probate referee's decisions, approving an application for fees, and rejecting their request for payment of the transcript of the proceedings. AFFIRMED.

Benford Walker and Glen Walker, pro se, for appellants.

Bernard J. O'Malley of Connolly, O'Malley, Lillis, Hansen & Olson, Des Moines, for Valley National Bank, administrator of the estate of Florence Walker.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ. Hayden, J. takes no part.

PER CURIAM

This is the fifth in a series of appeals taken by the appellants, Benford and Glen Walker, regarding the estate of Florence Walker over the last ten years. Messrs. Walker appeal the district court's ruling of January 16, 1987, approving the estate's administrator's and attorney's applications for fees; affirming the probate referee's decisions approving the final report of the administrator of the estate; and rejecting the appellants' request that the court order and pay for a copy of the proceedings held between September 24 and

November 4, 1986, before the referee in probate. Appellants contend that (1) numerous irregularities in the administration of the estate of Florence Walker require a finding rejecting the final report of the administrator of her estate; (2) the attorney for the estate and the administrator have a conflict of interest which should result in the reduction of their fees; (3) the district court erred in not paying for the transcript of those proceedings held on September 24, October 7, October 16, October 28, and November 4, 1986, before the referee in probate; and (4) the selection of judges in Iowa violates the equal protection clause of the United States Constitution. We affirm the district court's ruling of January 16, 1987.

All issues presented to this court in appellants' brief concerning the numerous irregularities in the

administration of the estate of Florence Walker and the alleged conflict of interests on the part of the attorneys for the estate and the administrator of the estate have been previously ruled upon by this court. See In the Matter of the Estate of Florence Walker, 2-72 (June 29, 1982), 5-112 (May 28, 1985), and 6-352 (April 22, 1987) (Iowa App.). See In the Matter of Conservatorship of Florence Walker, 0-404 (March 24, 1981) (Iowa App.). The issue concerning the removal of Benford Walker as administrator of the estate and the requirement that he repay the money was ruled upon by the Polk County District Court on October 3, 1980. This order was not appealed by the Messrs. Walker. Appellants' contention that Iowa's judicial selection process violates the equal protection clause of the United States Constitution also was ruled upon in the United States District Court for the Southern District of Iowa,

Civ. No. 84-650-B, on September 6, 1984. This case was appealed to the Eighth Circuit and dismissed. As stated in our opinion previously issued on April 22, 1987, the doctrine of res judicata precludes the appellants from reasserting these issues. See In re Marriage of Kurtz, 199 N.W.2d 312, 315 (Iowa 1972) ("[A] matter once decided is finally decided and may not be again litigated...."); In re Estate of Jarvis, 185 N.W.2d 753, 756 (Iowa 1971).

The issue regarding the alleged failure of the district court to tax to the estate payments for copies of transcripts of proceedings before the probate referee remains for our consideration. These proceedings were held on September 24, October 7, October 16, October 28, and November 4, 1986. Appellants contend that they could not afford to pay for the transcript themselves because their assets were tied

up in the estate of Florence Walker. They claim that without the transcript, they are unable to prove "fraud, collusion, bad faith, and negligence (of the) administrator." The appellants did not provide this court with a transcription of the proceedings before the probate referee. Therefore, we must rely upon the district court's order of January 9, 1987, and the record of the hearing held regarding the appellant's motion. The district court stated it overruled appellants' motion because neither the probate referee nor the administrator or attorney for the estate, nor the majority of parties or heirs of the estate requested the proceedings in question transcribed; all parties understood that the nature of the proceedings did not dictate that it was necessary or economical to have such proceedings transcribed; the appellants were further notified by the court that

they would be responsible for the expense of reporting and transcription; that upon such notification the appellants proceeded to hire a court reporter to transcribe these proceedings and as such voluntarily incurred the expense of the transcription. We find no error in the district court's rationale. There is no requirement in the Rules of Probate Procedure wherein the referee must have the proceedings before it transcribed and taxed to the estate. I. R. Probate P. 4.1. Appellants were aware they could have the proceedings transcribed if they so desired and that they would be responsible for the cost of such transcription.

Further, those factual issues concerning the propriety of the actions of the administrator of the estate which arose out of the proceedings held before the referee cannot be addressed by this court because no record has been produced

for our review. Appellants admit to this fact in their brief. It is appellants' duty to provide this court with a transcript of all evidence relevant to the issues they present, especaillly if they assert the court's ruling is "unsupported or contrary to the evidence."I. R. App. P 10(b).

Cost are taxed to the appellants.

AFFIRMED.

Appendix B

IN THE SUPREME COURT OF IOWA

No. 87-223

O R D E R

IN THE MATTER OF THE ESTATE OF
FLORENCE E. WALKER:

BENFORD M. WALKER and GLEN WALKER
and BENFORD WALKER and GLEN WALKER
"NEXT FRIEND" OF FLORENCE WALKER AND
THE FLORENCE WALKER ESTATE,
Appellants,

vs.

REXFORD A. WALKER, CHARLOTTE SMITH,
CHARLES J. WALKER, MILO D. DAILEY, IV.,
MARGARET REBECCA THURSTON, and MICHAEL
DAILEY,
Appellees.

Filed September 2,1988

The application for further review filed by appellants is hereby overruled and denied after consideration by this court en banc.

Dated this 2nd day of September, 1988.

THE SUPREME COURT OF IOWA

BySigned by Arthur McGiverin
Arthur A. McGiverin, Chief Justice

Appendix C

IN THE COURT OF APPEALS OF IOWA

No. 87-223

Iowa District Court for Polk County
No.25-8339

PERCEDENDO

IN THE MATTER OF THE ESTATE OF
FLORENCE E. WALKER, Deceased.

BENFORD M. WALKER and GLEN WALKER
and BENFORD WALKER and GLEN WALKER,
"Next Friend" of FLORENCE WALKER,
and the FLORENCE WALKER ESTATE,
Appellants,

vs.

REXFORD A. WALKER, CHARLOTTE SMITH,
CHARLES J. WALKER, MILO D. DAILEY IV,
MARGARET REBECCA THURSTON and MICHAEL
DAILEY,
Appellees.

Filed June 29,1988

To the Iowa District Court
for Polk County:

Whereas, there was an appeal from the district court judgment in the above-captioned case to the supreme court, which transferred the case to the court of appeals, and on the 29th day of June, 1988, the court of appeals affirmed the judgment of the district court.

Therefore, you are directed to proceed with diligence and according to law in the same manner as if there had been no appeal.

In witness whereof, I have hereunto set my hand and affixed the seal of the court of appeals. Dated this 8th day of September, 1988.

Signed by R. K. Richardson
Clerk of the Court of Appeals

Appendix D

IN THE SUPREME COURT OF IOWA

IN THE MATTER OF THE ESTATE OF
FLORENCE E. WALKER

BENFORD M. WALKER and GLEN
WALKER and GLEN WALKER and
BENFORD WALKER, "NEXT FRIEND"
OF FLORENCE WALKER AND THE
FLORENCE WALKER ESTATE.
APPELLANTS,
vs.

REXFORD A. WALKER, CHARLOTTE
SMITH, CHARLES J. WALKER, MILO D.
DAILEY IV, MARGARET REBECCA
THURSTON, and MICHAEL DAILEY, and
THE VALLEY NATIONAL BANK OF DES
MOINES, IOWA, ADMINISTRATORS OF
THE FLORENCE WALKER ESTATE,

APPELLEES. No. 87-223
Filed November 23,1988

NOTICE OF APPEAL
TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Benford Walker, Glen Walker and Benford Walker and Glen Walker, "Next Friend" of Florence Walker and the Florence Walker Estate the appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment (order) of the Supreme Court of the State of Iowa,

overruling and denying appellants application for further review, entered on September 2, 1988.

This appeal is taken pursuant to 28 U.S.C. 8 1257 (2).

Signed by: Glen Walker

Benford Walker

APPENDIX E

IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE ESTATE OF
FLORENCE E. WALKER

BENFORD M. WALKER, GLEN WALKER and
BENFORD WALKER and GLEN WALKER, "NEXT
FRIEND" OF FLORENCE WALKER AND THE
FLORENCE WALKER ESTATE,
APPELLANTS

vs.

REXFORD A. WALKER, CHARLOTTE SMITH,
CHARLES J. WALKER, MILO D. DAILEY IV,
MARGARET REBECCA THURSTON, MICHAEL
DAILEY, and THE VALLEY NATIONAL BANK
OF DES MOINES, IOWA, ADMINISTRATOR OF
THE FLORENCE WALKER ESTATE,
APPELLEES.

Filed November 23, 1988 8-188
~~87-223~~

NOTICE OF APPEAL
TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Benford Walker, Glen Walker and Benford Walker

and Glen Walker, "Next Friend" of Florence Walker and the Florence Walker Estate, the appellants above named, hereby appeal to the Supreme Court of the United States from the final order of the Court of Appeals of Iowa, affirming the ruling of the Polk County, Iowa, District Court, entered on June 29, 1988.

This appeal is taken pursuant to 28 U.S.C. 8 1257 (2).

Signed by:

Glen Walker

Benford Walker

Appendix F

DISTRICT COURT ORDER

IN THE MATTER OF THE ESTATE OF
FLORENCE WALKER, Deceased.

ORDER OVERRULING MOTION BY BENFORD D. WALKER AND GLEN WALKER REQUESTING ORDER CONCERNING TRANSCRIPT.

PROBATE No. 25-8339

On the 9th day of January, 1987, this matter of the motion Requesting Order Concerning Transcript filed by Benford Walker and Glen Walker came on for hearing before this Court. Said Motion was filed December, 31, 1986,

pursuant to Order setting for hearing the Appeal by Benford Walker and Glen Walker of the appeals of the Findings of Fact and Conclusions of the Probate Referee regarding attorney fees and Executor fees, and the Final Report of the Administrator, which were set for hearing at 10:00 A.M., January 9, 1987.

Prior to hearing the matter, specifically set for hearing, the Court heard statements of the parties and counsel concerning the Motion and finds that at the time of the beginning of the hearings by the Referee in Probate of the Application for Fees and the Final Report, that the Referee in Probate did not request the reportings of those proceedings by a Court Reporter, the Administrator and attorney for the Estate did not request said reporting, nor did the majority of the parties or the attorney for a majority of the heirs (two thirds of the heirs) request any

reporting of the proceedings before the Referee, and that the Court and these latter parties and attorneys had the understanding that the nature of the proceedings and expense did not require nor was it economical or necessary for the Court reporting of the same.

The Court further finds that the attorney for the majority of the heirs, two-thirds of the total number of heirs, filed a resistance to said Motion and that the Administrator of the Estate filed a resistance to said Motion, both of which are on record herein.

The court further finds that after the proceedings were to begin, Benford Walker and Glen Walker requested the reporting of the proceedings and were notified specifically at that time by the Court, and additionally through comments of the attorney for the Estate and the attorney for a majority of the heirs, that any such expense of the reporting or

the transcript of the same would be specifically at the expense of Benford Walker and Glen Walker, who, upon such admonishment, proceeded to hire certain Court reporters to transcript the several hearings on the attorney and Administrator fees and Final Report that followed thereafter.

The Court further finds that Benford Walker and Glen Walker had been fully apprised of the obligation to pay any expense that they voluntarily incurred and that the same is their expense and that the same should not be incurred by the majority of the heirs or the Estate.

The court orally ruled on said Motion from the bench, denying the same, on the 9th day of January, 1987, and then proceeded to hear the matters that had been set down on said date concerning Benford Walker and Glen Walker's appeal of the Ruling of the Referee in Probate

on attorney fees and Administrators fees, and the approval of the Final Report.

The Court in this Order herein for the record is formalizing in more detail his previous oral ruling.

IT IS THEREFORE ORDERED that the Motion of Benford Walker and Glen Walker requesting order concerning the transcript is hereby denied.

Signed by Harry Perkins, Judge
Fifth Judicial District of Iowa

Appendix G

DISTRICT COURT ORDER

IN THE MATTER OF THE ESTATE OF
FLORENCE WALKER, Deceased.

ORDER AFFIRMING FINDINGS OF FACT
AND CONCLUSIONS OF LAW OF REFEREE
IN PROBATE DATED DECEMBER 10,1986,
REGARDING APPLICATION FOR ATTORNEY
FEES AND ADMINISTRATOR FEES

PROBATE No. 25-8339

On the 9th day of January, 1987, this matter came on for hearing before the undersigned District Court Judge, Harry Perkins, after having been set for said date by Court Order and Notice to the parties, pursuant to Appeal of said Findings of Fact and Conclusions of Law filed by Benford Walker and Glen Walker.

The Court upon hearing the statements of Benford Walker and Glen Walker in reference to their appeal concerning the Ruling of the Referee in Probate on the attorney fees and administrator fees and allowing said individuals to make their record and to

present any evidence, and asking statement of counsel for the other majority of the heirs of the Estate and counsel for the Estate, took said matter under advisement.

That while the Court was taking said matter under advisement, the Court received a letter from the Iowa Supreme Court, dated January 13, 1987. Said letter written pursuant to a letter to the Justice by Benford Walker and Glen Walker on January 13,1987. Said letter of Justice Charles Wolle of the Iowa Supreme Court concluded that the Supreme Court does not have jurisdiction over the orders entered by Judge Harry Perkins which is the subject of said letter, and the Court proceeded in its ruling herein.

The court further finds that the attorney for the majority of the beneficiaries (two-thirds of the total number of beneficiaries), filed a response to the Referee's Findings of

Fact and Conclusions of Law which is on record herein, requesting the Court to resist all objections filed by Benford Walker and Glen Walker to the Rulings and Findings of the Referee and said majority beneficiaries additionally asked the Court to adopt and uphold the Findings of Fact and Conclusions of Law of the Probate Referee entered on December 10, 1986.

The Court having taken all matters under advisement finds that the Findings of Fact and Conclusions of Law of the Referee in Probate filed December 10,1986, involving the matter of the Application for the Court to Set Attorney Fees and Administrator fees for extraordinary services rendered in this Estate should be affirmed and that the same Ruling entered by the Referee in Probate is incorporated herein and made a part hereof as if the same was specifically, word by word, set out

herein, and by this reference the same is made a part hereof.

IT IS THEREFORE ORDERED, that Bernard J. O'Malley is allowed for extraordinary fees and services, including those related to the farm sale and to the Federal Court litigation the amount of $23,930.00. That this, together with the ordinary service fee of $2,334.23 totaling $26,264.23 are the fees so ordered and these fees cover all hours of time of the attorney for extraordinary services to September 30,1986. Any additional time of the attorney for extraordinary services shall be paid at the rate of $75.00 per hour, but not to exceed $1,500.00.

IT IS FURTHER ORDERED, that the Valley National Bank, Administrator, should be paid the sum of $6,920.00, which includes an award for time involved for keeping this estate and the records for at least five (5) years beyond the

normal closing time, plus the amount now awarded for ordinary services of $2,088.18, which includes total fees for time to September 30,1986, in the total sum of $9,008.18. Any additional time of the Administrator for extraordinary services shall be paid at the rate of $50.00 per hour but not to exceed $1,000.00.

IT IS FURTHER ORDERED, that all of the findings, ruling and conclusions of the Referee in Probate are specifically incorporated herein as if the same were specifically set out and that the Court affirms the Ruling and Conclusions of Law of the Referee in Probate.

DATED this 16th day of January, 1987.

Signed by Harry Perkins, Judge
Fifth Judicial District of Iowa

Appendix H

DISTRICT COURT ORDER

IN THE MATTER OF THE ESTATE OF
FLORENCE WALKER, Deceased.

ORDER AFFIRMING FINDINGS OF FACT
AND CONCLUSIONS OF LAW BY REFEREE
IN PROBATE DATED DECEMBER 10,1986,
REGARDING FINAL REPORT OF ADMINISTRATOR

PROBATE No. 25-8339

On the 9th day of January, 1987, this matter came on for hearing before the undersigned District Court Judge, Harry Perkins, after having been set for said date by Court Order and Notice to the parties, pursuant to Appeal of said Findings of Fact and Conclusions of Law filed by Benford Walker and Glen Walker.

The Court, upon hearing the statements of Benford Walker and Glen Walker in reference to their appeal concerning the Ruling of the Referee in Probate on the Final Report of the Administrator, Valley National Bank, allowing said individuals to make their record and to present any evidence, and

asking statement of counsel for the other majority of the heirs of the Estate and counsel for the Estate, took said matter under advisement.

The court further finds that the attorney for the majority of the beneficiaries (two-thirds of the total number of beneficiaries), filed a response to the Referee's Findings of Fact and Conclusions of Law which is on record herein, requesting the Court to resist all objections filed by Benford Walker and Glen Walker to the Rulings and Findings of the Referee and said majority beneficiaries additionally asked the Court to adopt and uphold the Findings of Fact and Conclusions of Law of the Probate Referee entered on December 10,1986.

That while the Court was taking said matter under advisement, the Court received a letter from the Iowa Supreme Court, dated January 13,1987, and as

shown therein, said letter was written pursuant to a letter to the Justice by Benford Walker and Glen Walker on January 13,1987. Said letter of Justice Charles Wolle of the Iowa Supreme Court concluded that the Supreme Court does not have jurisdiction over the orders entered by Judge Harry Perkins which is the subject of said letter, and the Court proceeded in its ruling herein.

The Court having taken all matters under advisement finds that the Findings of Fact and Conclusion of Law of the Referee in Probate filed December 10,1986, involving the matter of the Final Report of the Administrator of the Estate, Valley National Bank, should be affirmed and that the same Ruling entered by the Referee in Probate is incorporated herein and made a part hereof.

IT IS THEREFORE ORDERED, that the Final Report as filed is approved and the Estate shall move toward a conclusion,

subject to the filing of a compliance report at a later date showing full distribution, at which time there would also be a showing that the Supreme Court Appeal has been concluded.

IT IS FURTHER ORDERED, that all of the findings, ruling and conclusions of the Referee in Probate are specifically set out and that the Court affirms the ruling and Conclusion of Law of the Referee in Probate.

Dated this 16th day of January, 1987.

Signed by Harry Perkins, Judge
Fifth Judicial District of Iowa

Appendix I

DISTRICT COURT ORDER

IN THE MATTER OF THE ESTATE
OF FLORENCE WALKER, Deceased.

RULING OR ORDER

The motion of Benford Walker and Glen Walker to reconsider the ruling on their request for an order of a

transcript without payment of the court reporters charge is after due consideration overruled. In so ruling the court again concludes that such a transcript is unnecessary for the de novo appeal and if furnished it should be at the expense of Benford and Glen Walker who engaged the services of the court reporter.

The motion is also overruled which seeks a continuance of the hearing on the appeal of the Referee's ruling. That hearing was duly scheduled, Benford and Glen Walker were present. They advised the court they had no evidence to present. The court has since ruled affirming the Referee and there remains no matter pending before this court in that regard.

Signed by Harry Perkins, Judge

Appendix J

UNITED STATES CONSITUTION
AMENDMENT 14 - SECTIONS 1 & 2

Section 1. All persons born or natualized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for

President and Vice President of the United States, Representatvies in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Appendix K

IOWA CONSTITUTION
AMENDMENT 21

Vacancies in courts. Sec. 15. Vacancies in the Supreme Court and district Court shall be filled by appointment by the Governor from lists of nominees submitted by the appropriate

judicial nominating commission. Three nominees shall be submitted for each Supreme Court vacancy, and two nominees shall be submitted for each District Court vacancy. If the Governor fails for thirty days to make the appointment, it shall be made from such nominees by the Chief Justice of the Supreme Court.

State and district nominating commissions. Sec. 16. There shall be a State Judicial Nominating Commission. Such commission shall make nominations to fill vacancies in the Supreme Court. Until July 4, 1973, and thereafter unless otherwise provided by law, the State Judicial Nominating Commission shall be composed and selected as follows: There shall be not less than three nor more than eight appointive members, as provided by law, and an equal number of elective members on such Commission, all of whom shall be electors of the state. The appointive members shall be appointed

by the Governor subject to confirmation by the Senate. The elective members shall be elected by the resident members of the bar of the state. The judge of the Supreme Court who is senior in length of service on said Court, other than the Chief Justice, shall also be a member of such Commission and shall be its chairman.

There shall be a District Judicial Nominating Commission in each judicial district of the state. Such commissions shall make nominations to fill vacancies in the District Court within their respective districts. Until July 4, 1973, and thereafter unless otherwise provided by law, District Judicial Nominating Commissions shall be composed and selected as follows: There shall be not less than three nor more than six appointive members, as provided by law, and an equal number of elective members on each such commissions, all of whom

shall be electors of the district. The appointive members shall be appointed by the Governor. The elective members shall be elected by the resident members of the bar of the district. The district judge of such district who is senior in length of service shall also be a member of such commission and shall be its chairman.

Due consideration shall be given to area representation in the appointment and election of Judicial Nominating Commission members. Appointive and elective members of Judicial Nominating Commissions shall serve for six year terms, shall be ineligible for a second six year term on the same commission, shall hold no office of profit of the United States or of the state during their terms, shall be chosen without reference to political affiliation, and shall have such other qualifications as may be prescribed by law. as near as may be, the terms of one-third of such

members shall expire every two years.

Appendix L

IOWA RULE OF CIVIL PROCEDURE 375
"RECALL AND TRANSFER OF JUDGES"

The supreme court by and through the chief justice may at any time order the recall of eligible retired judges for active service, and the transfer of active judges and other court personnel from one judicial district to another to provide a sufficient number of judges to handle the judicial business in all districts promptly and efficiently.

Appendix M

SUPPLEMENTAL ORDER OF THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR POLK COUNTY

IN THE MATTER OF THE ESTATE OF FLORENCE E. WALKER, DECEASED

Probate No. 25-8339

The District Court of the State of Iowa
In and For Polk County

Filed March 24, 1980

On the 10th day of March 1980 the

Court filed herein an order on a pretrial conference which was held on March 7, 1980. This supplemental order is entered in accordance with paragraph 6 of the order of March 10, 1980.

At the pretrial conference of March 7, 1980 Bernard J. O'Malley, attorney for Benford M. Walker, Executor of this estate, requested some direction from the Court pertaining to his responsibility, if any, to participate in the litigation of the contest of the will admitted herein.

The Court upon examination of the files and records herein finds:

1. That all person interested in the will contest are of legal age and all are represented by legal counsel, with the exception of Glenn D. Walker who has elected to appear pro se.

2. On the record herein the will contest is one of personal interest between proponents and contestants of the

will.

3. It does not appear and no showing has been made that any substantial estate interest appears that would justify the nominated executor to incur expenses or attorney fees in the will contest.

IT IS THEREFORE ORDERED that Bernard J. O'Malley, attorney for the estate and the executor, Benford M. Walker, has no responsibility to participate in the pending will contest herein.

Signed this 24th day of March 1980.

Appendix N

IOWA DISTRICT COURT ORDER

IN THE MATTER OF THE ESTATE OF
FLORENCE E. WALKER, Deceased.

Probate No. 25-8339

Filed January 2, 1981

NOW, on this 2nd day of January, 1981, the Order herein came before the Court pursuant to a hearing having been held on December 31, 1980, and the Court being advised in the premises finds that all interested parties were given notice as ordered by the Court, and that there was present personally Benford Walker, Glen Walker, Kenneth Biermacher, attorney for the remaining heirs of Florence Walker, Sue Cramer on behalf of Valley National Bank, the Administrator, and Bernard J. O'Malley, attorney for the estate. The Court having heard the evidence, tesitmony and statements of all the parties, finds that neither Valley National Bank, Administrator, nor Bernard

J. O'Malley have had to date any part in the preparation of the briefs, documents filed or the appeal that comes on for hearing before the Court of Appeals in February, 1981, which is the subject matter of the application filed herein, and that neither is expected or required to attend or take any part in the oral argument set regarding said appeal. The Court further finds that, through statements of Ben Walker and Glen Walker, they did not expect to desire that the present Administrator or attorney for the estate become involved in said oral arguments. The Court further finds that since Benford Walker has been removed as Executor, he cannot represent the estate as Executor at said oral arguments. That the Court has no control or jurisdiction over an heir, individually, proceeding on said heir's own behalf regarding said appeal.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that neither the Valley National Bank nor Bernard J. O'Malley need become involved, nor are they expected to become involved in the appeal involving the Conservatorship of Florence E. Walker, Appeal No. 2-64580, and in particular, but not necessarily limited to the oral argument set for Tuesday, February 3, 1981 at 10:30 A.M.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court is not interfering with or affecting any rights of Benford Walker as an individual to proceed as he wishes, as an individual, but that he is no longer an Executor of the Estate and therefore may not act in any fiduciary capacity as Executor of the Estate or as a fiduciary representative of the heirs.

Signed by Dick Stickler, Judge
Fifth Judicial District of Iowa

Prepared by Glen Walker
Benford Walker
201 N.W. College
Ankeny, Iowa
50021

Supreme Court, U.S.
FILED
DEC 29 1988
JOSEPH F. SPANIOL, JR.
CLERK

(2)

NO. 88-893

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

IN THE MATTER OF THE ESTATE OF
FLORENCE E. WALKER

BENFORD WALKER and GLEN WALKER,

Appellants,

vs.

REXFORD A. WALKER, CHARLOTTE SMITH, CHARLES J. WALKER, MILO D. DAILEY IV, MARGARET REBECCA THURSTON and MICHAEL DAILEY and VALLEY NATIONAL BANK OF DES MOINES, IOWA, ADMINISTRATORS OF THE FLORENCE WALKER ESTATE,

Appellees.

ON APPEAL FROM THE
IOWA COURT OF APPEALS

APPELLEES' MOTION TO DISMISS AND ALTERNATIVE MOTION TO AFFIRM

DAVID L. PHIPPS
1300 First Interstate
Bank Building
Des Moines, Iowa 50309
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28 pp

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II. AUTHORITIES

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MOTION TO DISMISS

COME NOW the Appellees, Rexford A. Walker, Charlotte Smith, Charles J. Walker, Milo D. Dailey IV, Margaret Rebecca Thurston and Michael Dailey, and pursuant to Rule 16(a) of the Rules of the Supreme Court of the United States move the Court for an Order dismissing the above-captioned appeal. In support of said Motion, the Appellees state as follows:

1. Appellants' Statement of Jurisdiction and Notice of Appeal take the position that this case may be entertained by the United States Supreme Court pursuant to 28 U.S.C.S. §1257(2) apparently taking the position that the case is reviewable as a matter of appeal from the Iowa Court of Appeals due to the finding of constitutionality with respect to

certain challenged provisions of the Iowa Constitution.

The only issue raised by the Appellants in the appeal to the Iowa Court of Appeals which might arguably be construed to have "drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution . . . of the United States . . ." as required for jurisdiction under 28 U.S.C.S. §1257(2) was the Appellants' challenge to the judicial selection method in Iowa and their argument that the 21st Amendment to the Iowa Constitution (providing for judicial selection) was repugnant to the United States Constitution.

In fact, the issue which is now argued by Appellants to be jurisdictional was not addressed by the Iowa Court of Appeals on the merits due to the fact that

the issue had already been determined against the Appellants in federal decisions which constituted res adjudicata to the appeal then under consideration. See Appendix A to the Jurisdictional Statement, pp. 4-5.

In fact, the Appellants' challenge of the Iowa judicial selection process was the subject matter of an action commenced by the Appellants in the United States District Court for the Southern District of Iowa, Civil No. 84-650-B filed September 6, 1984. That Complaint was dismissed by the District Court with a finding that the Complaint was without merit.

The Appellants appealed the decision of the District Court to the United States Court of Appeals for the Eighth Circuit (Appeal No. 85-1833 -- See Appendix A to this Motion). That appeal

was dismissed on January 7, 1986, again with the finding that the appeal was frivolous and without merit. Appellants sought a writ of certiorari to the United States Supreme Court, Appeal No. 85-1849, which writ was denied by the United States Supreme Court by Order of October 6, 1986.

Consequently, Appellants constitutional contentions have already been determined by the federal judiciary to be frivolous and not real. Such fictitious federal questions do not form a basis for jurisdiction for an appeal to the Supreme Court of the United States.

The instant appeal is frivolous and without merit and should be dismissed pursuant to Rule 16(a) of the Rules of the Supreme Court of the United States.

ALTERNATIVE MOTION TO AFFIRM

COME NOW the Appellees, Rexford A. Walker, Charlotte Smith, Charles J. Walker, Milo D. Dailey IV, Margaret Rebecca Thurston and Michael Dailey, and pursuant to Rule 16(c) of the Rules of the Supreme Court of the United States move the Court for an Order affirming the decision of the Iowa Court of Appeals in Appeal No. 87-223 filed June 29, 1988. In support of said Motion, Appellees state as follows:

1. The instant appeal is but the latest round of frivolous and insubstantial legal maneuvers employed by the Appellants to delay the closing of the Estate of Florence Walker and to harass the Appellees.

2. All of the issues raised by the Appellants in this appeal have been raised repeatedly by the Appellants in

various legal proceedings (including five direct appeals to the Iowa Court of Appeals or the Iowa Supreme Court related specifically to the probate proceedings in this matter). The only issues raised in Appeal No. 87-223 which had not been examined in previous appeals were the Appellants generalized objections to the closing of the estate, the payment of attorney's fees and the Iowa District Court's refusal to order the production of a transcript without the Appellants paying for the same.

The "new" issues raised in Appeal No. 87-223 were, in fact, unsubstantial and so frivolous as to not need further argument or consideration.

Accordingly, the Appellants' instant appeal to the Supreme Court of the United States should be dismissed under Rule 16(c).

ARGUMENT

BRIEF POINT I.

THIS APPEAL SHOULD BE DISMISSED AS NOT WITHIN THE COURT'S JURISDICTION UNDER 28 U.S.C.S. §1257(2).

The Appellants' claimed basis of jurisdiction is 28 U.S.C.S. §1257(2) which deals with cases where there is "drawn in question the validity of a statute of any state on the ground of its being repugnant to the constitution, treaties or laws of the United States, and the decision is in favor of its validity." Appellants' constitutional challenge deals with their contention that the 21st Amendment to the Iowa Constitution violates the 14th Amendment to the United States Constitution. As pointed out in the Appellees' Motion to Dismiss, that issue has been conclusively determined against the Appellants by a

prior federal decision. The Appellants presented the same constitutional challenge in a separate lawsuit in the United States District Court for the Southern District of Iowa entitled Glen Walker, et al v. State of Iowa, et al and identified as No. 84-650-B. That Complaint, which was filed on September 6, 1984, sought to set aside all of the previous proceedings conducted by the Iowa Probate Court in the matter of the Estate of Florence Walker. The Complaint was dismissed by the District Court with the finding that the Complaint was without merit. The Appellants appealed that decision to the United States Court of Appeals for the Eighth Circuit (Appeal No. 85-1833). That appeal was likewise dismissed on January 7, 1986, again with the finding that the appeal was frivolous and without merit (See Appendix A attached hereto). Ap-

pellants sought a writ of certiorari to the United States Supreme Court (Appeal No. 85-1849) which writ was denied by the United States Supreme Court by Order of October 6, 1986.

28 U.S.C.S. §1257(2), the claimed jurisdictional basis of this appeal is, of course, drafted with the assumption that parties and practitioners before the Court will be presenting legitimate and not frivolous or fictitious constitutional challenges. As may be seen from the foregoing history, even if the Appellants' claims were not entirely frivolous, they have already been conclusively determined against the Appellants. It is also axiomatic, however, that in order to have a jurisdictional basis for such challenge under 28 U.S.C.S. §1257, the federal question presented has to be real and not fictitious in order to allow a ba-

sis of review of state court judgments. Caldwell v. Texas, 137 U.S. 692, 34 L.Ed. 816, 11 S.Ct. 224 (1891); Equitable Life Assurance Society v. Brown, 187 U.S. 308, 47 L.Ed. 190, 23 S.Ct. 123 (1902). It has, in fact, been recognized that the United States Supreme Court is totally lacking in jurisdiction of a writ of error to a state court where there is no substance or color of merit to the federal question presented as a jurisdictional basis. Wabash R. Co. v. Flannigan, 192 U.S. 29, 48 L.Ed. 328, 24 S.Ct. 224 (1904). The mere contention that immunities secured by the 14th Amendment to the United States Constitution are violated by state court decisions have frequently been observed to be too frivolous to serve as a jurisdictional basis for appeals from state court decisions. See, e.g., Delmar

Jockey Club v. Missouri, 210 U.S. 324, 52 L.Ed. 1080, 28 S.Ct. 732 (1908). So-called "federal questions" which are merely manufactured and which rest upon obviously false assumptions have been construed to be so plainly devoid of merit as to afford no jurisdictional basis for appeals from state court decisions. See, e.g., Parker v. McLain, 237 U.S. 469, 59 L.Ed. 1051, 35 S.Ct. 632.

The completely frivolous nature of the Appellants' claim has already been repeatedly determined by judicial process including a complete exhaustion of the right of appeal by way of previously refused writ of certiorari, as noted above. Consequently, there can be no legitimate constitutional issue presented in this case and the appeal should be dismissed.

BRIEF POINT II.

THE DECISION OF THE IOWA COURT OF APPEALS IN APPEAL NO. 87-223 RENDERED JUNE 29, 1988 SHOULD BE AFFIRMED BECAUSE IT IS MANIFEST THAT THE QUESTIONS PRESENTED BY THE APPELLANTS ARE SO UNSUBSTANTIAL AS TO NEED NO FURTHER ARGUMENT.

As is pointed out in Brief Point I. of this Argument, the Iowa Court of Appeals decision from which this appeal derives was the fifth appeal to the Iowa Supreme Court or the Iowa Court of Appeals based upon the probate proceedings in the Estate of Florence E. Walker. The Appellants succeeded in delaying the closing of the estate for a period of ten (10) years by duplicitous, repetitive and frivolous appeals and collateral challenges. The decision of the Iowa Supreme Court on June 29, 1988 (Appendix A to the Jurisdictional Statement) gives a short summary

of the previous meritless appeals of the Appellants. As was pointed out in Brief Point I. of this Argument, the only new issues presented in Appeal No. 87-223 were the Appellants generalized objections to the closing of the estate and the payment of attendant legal fees for the attorney for the estate and the Appellants contention that the District Court should have ordered the production of transcripts of various District Court proceedings without the necessity of the Appellants paying for the same. As was pointed out at Pages 5 through 7 of the Appendix to the Jurisdictional Statement (in the Iowa Court of Appeals decision), the Appellants were not even serious enough about the contentions raised to order transcripts of the proceedings about which they were complaining. Consequently, the appeal presented to the Iowa

Court of Appeals had to be reviewed solely based upon the pleadings of the parties and the orders entered by the Referee in Probate and the District Court Judge. The Appellants had been warned by previous orders of the District Court and even by an advisory order of the Iowa Supreme Court that it was the Appellants duty to furnish the transcript of such proceedings if they wished to have the matter reviewed on appeal. They declined to do so. Consequently, there really were no substantive matters which could be reviewed by the Iowa Court of Appeals, nor could any such meaningful review be made by this Court due to the Appellants refusal to produce a transcript. The Appellants' contention that the Court should finance the preparation of the transcript is ludicrous and without any legal authority. The Supreme Court of the United

States has consistently declined jurisdiction where the constitutionality of state law is challenged, but where it appears that the constitutional question presented is not substantially in character. See, e.g., Zucht v. King, 260 U.S. 174, 67 L.Ed. 194, 43 S.Ct. 24 (1922).

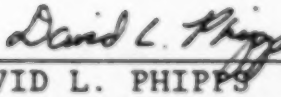
Accordingly, the decision of the Iowa Court of Appeals on June 29, 1988 should be affirmed pursuant to Rule 16(c).

CONCLUSION

The instant appeal is simply a dilatory tactic in a long series of ill-founded legal ploys. The Estate of Florence Walker has finally been closed after ten (10) years of litigation and after repeated thorough examination of all of the Appellants' contentions. No legitimate basis for jurisdiction in this Court exists

under 28 U.S.C.S. §1257(2) or any other statute. Consequently, this case should be dismissed under Rule 16(a) of the Rules of the Supreme Court of the United States. In the alternative, the Court may simply wish to affirm the judgment of the Iowa Court of Appeals of June 29, 1988 in Appeal No. 87-223 which is set forth as Appendix A in the Jurisdictional Statement. In whichever fashion seems most appropriate, this litigation should be concluded.

Respectfully submitted,



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THURSTON and MICHAEL DAILEY

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 85-1833

Glen Walker and Benford Walker,
Next Friend of Florence Walker, deceased
and Estate of Florence Walker,

Appellants,

v.

State of Iowa, Judicial Department of
State of Iowa, including Supreme Court,
Court of Appeals and Polk County District
Court; W. W. Reynoldson, Chief Justice;
Thomas J. Miller, Attorney General; Valley
National Bank and Trust Co., Administrator
of the Estate of Florence Walker and its
attorney, Bernard O'Malley,

Appellees.

Appeal from the United States
District Court for the
Southern District of Iowa.

Submitted: November 4, 1985

Filed: January 7, 1986

Before HEANEY, BOWMAN, and
WOLLMAN, Circuit Judges.

PER CURIAM.

Glen and Benford Walker appeal pro se from the district court's dismissal of their civil rights suit for failure to state a claim. They allege that they and their deceased mother, Florence Walker, were deprived of due process of law in state court proceedings concerning the conservatorship of Florence Walker and probate of her will. They also contend that the twenty-first amendment to the Iowa Constitution violates the Federal Constitution because it denies them the right to vote for state judges.

We have carefully reviewed that record and we find appellant's (sic) arguments frivolous and without merit. Accordingly, the appeal is dismissed. See 8th Cir. R. 12(a).

A true copy.

Attest:

CLERK, U. S. COURT OF
APPEALS, EIGHTH CIRCUIT.

CERTIFICATE OF SERVICE

COMES NOW the undersigned and pursuant to Rule 28(b) hereby certifies that this Motion to Dismiss and Alternative Motion to Affirm has been served upon the Appellants, Benford Walker and Glen Walker, pursuant to Rule 28.3 by mailing to each Appellant, as set forth below, three (3) copies of the Motion and by depositing said copies in the United States postal mailbox, with first- class postage prepaid, addressed to the Appellants as set forth below:

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Ankeny, Iowa 50021

Glen Walker
201 N.W. College
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By: David L. Phipps
DAVID L. PHIPPS

ATTORNEYS FOR APPELLEES, REXFORD A. WALKER, CHARLOTTE SMITH, CHARLES J. WALKER, MILO D. DAILEY, IV, MARGARET REBECCA THURSTON and MICHAEL DAILEY

STATEMENT OF FILING

STATE OF IOWA :
: ss.
COUNTY OF POLK :

COMES NOW the undersigned attorney for the Appellees and hereby states that the foregoing Motion to Dismiss and Alternative Motion to Affirm were timely filed with the Clerk of the United States Supreme Court by depositing said Motion in a United States postal mailbox, with first-class postage prepaid, and properly addressed to the Clerk of the United States Supreme Court on the 29 day of December, 1988. The undersigned further states that said mailing, to his knowledge, took place on the 29 day of December, 1988, which was within the permitted time for the filing of said Motion.

David L. Phipps

DAVID L. PHIPPS
Attorney at Law

Subscribed and sworn to before me by the said David L. Phipps this 27th day of December, 1988.

Kathleen M. Conley

Notary Public in and for the
State of Iowa

(3)

Supreme Court, U.S.
FILED
JAN 11 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO. 88-893

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

GLEN WALKER, et al.,

Appellants

vs.

VALLEY NATIONAL BANK OF DES MOINES, IOWA, ADMINISTRATOR OF THE FLORENCE WALKER ESTATE AND REXFORD WALKER, et al.,

Appellees

ON APPEAL FROM THE COURT OF APPEALS OF IOWA

APPELLANTS BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

BENFORD WALKER, GLEN WALKER, AND BENFORD WALKER AND GLEN WALKER, NEXT FRIEND OF FLORENCE WALKER AND THE FLORENCE WALKER ESTATE

201 N.W. College
Ankeny, Iowa 50021

Appellants

7 pp

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RESISTANCE TO APPELLEES' MOTION TO DISMISS AND ALTERNATIVE MOTION TO AFFIRM

The Appellees motions to dismiss and alternative motion to affirm are without merit. The issues presented in this appeal are substantial. The 21st Amendment to the Iowa Constitution grants the right to vote for judicial nominating commission members to attorneys but denies that right to appellants. Thus denying appellants their rights under the 14th Amendment to the United States Constitution

A statute such as this poses "the danger of denying some citizens any effective voice in governmental affairs which substantially affect their lives. Kramer V. Union Free School District 395 U.S. 621, 627 so ". . . any infringment of the right to vote must be carefully and meticulously scrutinized." Reynolds V. Sims 377 U.S. 533, 562. It follows that this case is properly before the Supreme Court.

The argument in Appellees' Motions, that issues presented by Appellants for Supreme

Court review have been conclusively determined against Appellants (Appellees Motion to Dismiss, etc., P. 7 and P. 9), is without merit. Appellees' try to base their argument on the fact that Appellants filed a complaint in the United States District Court which led ultimately in denial of certiorari by the Supreme Court (Appellees' Motions, P. 8, 9) again as in the jurisdictional statement Appellants point out that that denial imports no expression upon the merits of the case, United States V. Carver 260 U.S. 482, 490 or does it amount to res judicata regarding the issues raised. Hughes Tool Co. V. Trans World Airlines 409 U.S. 363, 366.

Incidentally the ruling by the eighth circuit court of appeals (Appendix A, P. 19, to Appellees' Brief) is not correct. Appellants objected to the 21st Amendment to the Iowa constitution because it denied them the right to vote for the judicial nominating commission members while others had that

right. The issue was not the right to vote for judges per se.

Appellants point out that the five appeals to the Iowa Supreme Court (Appellees' Brief P. 6) were not taken to delay proceedings but to preserve Appellants rights because in Iowa orders of the probate court are final orders for purposes of appeal.

Also Appellants did not obtain the transcript (Appellees' Motion P. 13, 14) because they could not afford it (Appellants Jurisdictional Statement P. 23).

In their motion Appellees did not mention the issue regarding the arbitrary rotation of judges from one election district to another. They also did not address the issue of improper representation of Florence Walker and her estate. As set forth in the Jurisdictional Statement these issues further point out that Appellants were denied fundamental rights of due process, equal protection, and access to the court.

The authority cited by Appellees' adds nothing in support of their motions. Although cases may have existed where the issues presented to the court were not sufficient to serve as the basis for the courts jurisdiction, such is not the case in this appeal and the Appellees have not shown otherwise.

STATEMENT REGARDING APPENDIX TO JURISDICTIONAL STATEMENT

There was a typographical ommission to Appendix M, P. 36 of the Appendix to the Jurisdictional Statement. In addition thereto should be the words:

signed by Ray Hanrahan
Judge, Fifth Judicial District
of Iowa

CONCLUSION

For the reasons stated above the Supreme Court should overrule Appellees' Motion to Dismiss and Alternative Motion to Affirm.

Respectfully Submitted

Glen Walker
Glen Walker

Benford Walker
Benford Walker

Glen Walker
Glen Walker

Benford Walker
Benford Walker

Glen Walker and Benford Walker,
Next Friend of Florence Walker
and the Florence Walker Estate

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